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Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 699

ASSESSMENT OF MEDIATION AND ARBITRATION PROCEDURES

COMMENTS

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Practitioner

Due Date: October 25, 2010

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COMMENTS

These comments are submitted by the undersigned Practitioner, ^{1/} in his individual capacity, in response to notice and request for comments. 75 Fed. Reg. 52054 (Aug. 14, 2010).

It is recommended that the rulemaking be held open for further comments pending disposition of the proceeding instituted October 21, 2010 in Ex Parte No. 704, Review of Commodity, Boxcar, and TOFC/COFC Exemptions. ^{2/} It is difficult to anticipate the effect of mediation or arbitration measures absent consideration of regulatory efforts which may be revived on revocation of important classes of exemptions.

Moreover, it is questionable whether greater use of mediation should be encouraged, particularly if a given STB staff member may

^{1/} The Board maintains a register of practitioners, currently open to new candidates who are non-attorneys. 49 CFR 1103.1. The undersigned was admitted in 1957 at the time when attorneys were eligible.

^{2/} Notice of the proceeding, and December 9, 2010 hearing, have not been given by publication in the Federal Register, although an intention to do so has been announced to the press. (STB News, No. 10-28, 10/21/10). It is understood that the history claimed in the Ex Parte No. 704 notice may be seriously in error. The errors embrace the condition of the carriers in the 1970s, the purposes of the so-called 4-R Act and Staggers Act, among other matters.

alternate with the decisionmaking process, even though different cases may be involved. The traditional mode for mediation, utilized extensively by the STB's predecessor, has been the pre-hearing settlement conference conducted by Administrative Law Judges, See: 49 CFR 1113.3(A)(1)(ix), where expertise and impartiality is better guaranteed. Other federal transportation agencies do not employ the dangerous mediation procedure apparently suggested for augmentation by the August 14, 2010 notice.

In addition, reference to the Railroad-Shipper Transportation Advisory Council (RSTAC) should not be encouraged. The RSTAC membership is not representative of the many interests involved in STB proceedings but, more importantly, should be unnecessary with hearings open to public participation. The advisory committee process runs counter to the transparent regulatory agency scheme established by the Congress.

Respectfully submitted,



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